IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL
Government Appeal No. 2031 of 2001
(Old No. 2774 of 1980)

State … Applicant

Versus

Sohan Singh S/o Sri Bhajey Ram
Propriator of Sohan Diary Hakman's Compound
P.S. Mussoorie
District Dehradun … Respondent

Sri H.C. Pandey learned counsel for the State
Sri J.P. Joshi learned counsel for the opposite party

Hon'ble B.C. Kandpal, J.

This is the Government Appeal filed against judgment and order dated 27.08.1980 passed by Sessions Judge, Dehradun in Criminal Appeal No. 47 of 1980 acquitting the appellant.

Brief facts giving rise to this Government Appeal are that the appellant Sohan Singh was convicted under Section 7/16 A of the Prevention of Food Adulteration Act and was sentenced to six months rigorous imprisonment and a fine of Rs. 1,000/- by the order of Special Judicial Magistrate, Dehradun.

The appellant preferred the appeal before the court of learned Sessions Judge who vide his judgment and order dated 27.08.1980 allowed the appeal and set aside the conviction and sentence.

Feeling aggrieved by the aforesaid impugned order, the State has preferred the appeal against the acquittal of the appellant Sohan Singh which has been placed before me for disposal.

I have heard Sri. H.C. Pandey learned counsel for the State as well as Sri J.P. Joshi learned counsel for the respondent and perused the judgment passed by court below.

The appellant runs a dairy at Mussoorie. The receipt Ex.Ka 1 reads that sample of seprated Milk buffalo and cow was taken. The statement of Food Inspector and Naib Tehsildar also show that sample of seprated milk was taken.

The order passed by the court below shows that there is no evidence on record to show as to whether at the time of taking sample any enquiry was made with regard to the nature of seprated milk.

The definition of the skimmed milk – means mile from which all or almost all the milk fat has been removed by mechanically or any other process and includes seprated milk.

In the instant case, there is nothing to show which type of sample of skimmed milk or seprated milk taken by the Food Inspector.

It was obligatory on the part of the Food Inspector to make necessary enquiries from the appellant on this point. The Food Inspector nowhere has deposed that he made any enquiry from the appellant whether the sample was of the milk from which fat contents have been removed mechanically or it was of the milk from which the fat contents were removed by any other process.

To my mind the judgment and order passed by the learned Sessions Judge, Dehradun does not suffer with any sort of infirmity. I find no ground to interfere in the impugned judgment and order passed by the learned Sessions Judge by way of this appeal. The order passed by the learned Sessions

Judge, Dehradun acquitting the respondent Sohan Singh appears to be just and proper.

Accordingly, the government appeal is dismissed.

(B.C. Kandpal, J.)

9th February, 2005
ASWAL